

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

February 3, 2009

7:30 p.m.

Present at the 7:30 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Ralph Begleiter
Peggy Brown
Angela Dressel
Mary Lou McDowell
Rob Osborne
Kass Sheedy

Staff Present: Roy H. Lopata, Planning and Development Director

Chairman James Bowman called the Planning Commission meeting to order at 7:30 p.m.

1. THE MINUTES OF THE JANUARY 6, 2009 PLANNING COMMISSION MEETING.

MOTION BY SHEEDY, SECONDED BY DRESSSEL THAT THE JANUARY 6, 2009 PLANNING COMMISSION MINUTES BE APPROVED AS RECEIVED.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSSEL, McDOWELL,
OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

2. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE DELETING THE APARTMENT USE CATEGORY IN THE BLR (BUSINESS LIMITED RESIDENTIAL) ZONE.

Mr. Lopata summarized his report to the Planning Commission that reads as follows:

“As the Planning Commission may recall, the Planning and Development Department and the Commission over the recent past have reviewed amendments to the City’s “light” commercial/residential BLR zone intended to meet the apparent goal of the district to serve as a transitional and mixed development zone for apartment and limited (that is, non-food) commercial uses. Beyond that, these changes were also designed to reduce the relatively high residential density then permitted in the BLR zone. As a result, on September 11 and October 23, 2006, Council approved Zoning Code amendments that, among other things, reduced the permitted lot coverage and increased the minimum lot area for apartments in the BLR district.

While these changes have had the desired impact of reducing the density of apartment-type projects in the BLR zone, developers have continued to utilize the zone for free standing residential developments. In other words, mixed use projects – calling for business and residential uses – are not being proposed for land zoned or requested to be rezoned BLR. In the meantime, the City adopted a fully revised and updated Newark

Comprehensive Development Plan IV that underscored the goal of more carefully evaluating residential projects downtown (and elsewhere in the City), in terms of impacts on neighboring properties and to encourage owner occupancy. As a result, the Planning and Development Department believes the City should consider additional BLR zoning district amendments to limit the use of the district to mixed use and transitional zone projects. The Department’s suggestions in this regard appear below:

Existing Regulations

The BLR zone currently permits the following:

- A. Churches or places of worship
- B. Schools
- C. Parks and Playgrounds
- D. Municipal utilities uses
- E. Public transportation bus or transit stops
- F. Social club, fraternal, social service, union and civic organizations
- G. Accessory uses
- H. Hospital
- I. Apartments in conjunction with any nonresidential uses permitted in the district
- J. Offices for professional services and administrative activities
- K. Undertakers
- L. Barber shops and beauty parlors
- M. Personal service establishments
- N. Specialty retail stores with a maximum floor area limited to 5,000 square feet [non-food]
- O. Finance Institutions, banks, loan companies
- P. Six apartment units in any single detached or semi-detached residential building
- Q. Bed and breakfast, with special requirements

BLR zoning also permits, with a Council granted Special Use Permit, the following:

- A. Police and fire stations, library, museum and art gallery
- B. Golf courses and country clubs
- C. Electrical and gas substations
- D. Day care centers
- E. Drive-in or curb service for other than eating establishments

Please note, in particular, the use category above that permits up to six apartment units in free standing or semi-detached residential buildings. It is this use category that has been used most frequently for BLR zoned development.

Proposed Amendments

To ensure that future residential projects in this district are coupled with non-residential uses, the Planning and Development Department suggests the following Zoning Code amendments for the Planning Commission’s review and consideration. Please note that the first amendment proposed below meets the goal suggested here and the other amendments are required editorial changes.

Amendment 1:

Delete Zoning Code Section 32-16.1(a)(20) which reads as follows:

“Six apartment units in any single detached or semi-detached residential building.”

Amendment 2:

Amend Zoning Code Section 32-16.1(d)(1) *Minimum lot area*, which reads in part as follows:

“except for apartments or apartments in conjunction with nonresidential uses, the minimum lot area shall be one half acre, with a maximum number of dwelling units per gross acre not to exceed 16.”

By deleting the words, “apartments or,” so that the subsection reads as follows:

“except for apartments in conjunction with nonresidential uses, the minimum lot area shall be one half acre with a maximum number of dwelling units per gross acre not to exceed 16.”

Amendment 3

Amend Zoning Code Section 32-16.1(d)(2) *Maximum lot coverage*, which reads in part as follows:

“and except for apartments for which the maximum lot coverage shall be 25%.”

By inserting the words: “in conjunction with nonresidential uses,” after the word, “apartments,” so that the subsection reads:

“and except for apartments in conjunction with nonresidential uses, for which the maximum lot coverage shall be 25%.”

Amendment 4

Amend Zoning Code Section 32-16.1(d)(6), *Rear yards*, which reads in part as follows:

“except for apartments for which a rear yard of 25 feet, but in no case less than one half the height of the building, shall be provided on every lot.”

By adding the words, “in conjunction with nonresidential uses,” after the word, “apartments,” so that the subsection reads:

“except for apartments in conjunction with nonresidential uses, for which a rear yard of 25 feet, but in no case less than one half the height of the building, shall be provided on every lot.”

Amendment 5

Amend Zoning Code Section 32-16.1(d)(8) *Open area*, which reads as follows:

“At least 35% of the lot area shall be devoted to open area; except for apartments, where at least 40% shall be devoted to open area,”

By adding the words, “in conjunction with nonresidential uses,” after the word, “apartments,” so the subsection reads:

“At least 35% of the lot area shall be devoted to open area, except for apartments in conjunction with nonresidential uses, where at least 40% shall be devoted to open area.”

Recommendation

The Planning and Development Department suggests that the Planning Commission review this report, receive public input, and then **recommend that City Council approve the proposed Zoning Code amendments regarding the BLR district proposed above.**

I will be happy to answer any questions.

[Secretary's note: Due to a malfunction in the sound system, much of the recording was inaudible].

Mr. Bowman: Are there any questions from the Planning Commission?

Ms. Kass Sheedy: Can you give an example where BLR was used where it was not originally intended for?

Mr. Lopata: I will give you some examples of where it was used recently. There are several projects on North Street. A parcel was rezoned in the middle of a residential area, appropriately, because it was originally zoned commercial. If all those properties were put together, they could have been zoned RM, which also would have allowed townhouse apartments because that would have been, as far as I can recall, an acre.

I think, though, that it now looks better than what was there. For many, many years the Colorado Ski Company stood there empty. That is an example for the other side of this argument. You could argue, as you may hear later, that sometimes it is useful to have a district like that so you can take care of these kinds of problems. That is part of why developers use this district so if you have a half acre, you can develop it with eight apartments. There are other ways of doing that or we could change that part of the Zoning Code, which was recommended – reducing the RM zone – several years ago. I think that is something that we ought to reconsider because I think that there is nothing wrong, in my view, if you can have 16 units on an acre, I think you could have eight units on a half acre in RM. So, think it is something we can think about, but tonight I want to focus this.

There is also Hollywoods over on S. Chapel Street where the High Energy Gym was rezoned from industrial to BLR. Kevin Mayhew just did it on New London Road for his project. Those properties could have been zoned RM, but BLR is an easier zone to use, and there are some technical reasons for using BLR.

The City is going to continue to review apartments. This is a university town. Apartments are not going away, and I think we are kidding ourselves if we think they are. But, on the other hand, I think we need to be realistic about what this zone is supposed to be.

Ms. Sheedy: Roy, it would push this use towards Main Street.

Mr. Lopata: Yes, it would help somebody who wanted to develop in an existing BLR or wanted to rezone to BLR (inaudible). The other side of that coin is that it would push people to use RM, which is our garden apartments district or RR our townhouse district. Maybe that is an intellectual, philosophical thing because ultimately at the end of the day who cares? You still want a good product. I am not saying that what we have done in the past is a bad thing. I would have to look at it as it has outlived its usefulness. We have fiddled around with this before by increasing the maximum area. We went from many more units per acre to 16 with the same goal in mind, to try to get this district (inaudible).

Mr. Bowman: You have to look at the acronym. It was set up as “business limited residential.” We have flipped it around in most cases and it has been “residential limited business.”

Mr. Lopata: Jim, you have just said it better than I have in the last few minutes. That is exactly the problem.

Mr. Bowman: Are there any other questions for Roy?

Mr. Ralph Begleiter: Roy, I realize that the property and definition don't fit into BLR. I'm thinking about the kinds of uses that we are fitting into this new zoning district if we proceed the way you are proposing. Would the new building that was just completed and

still has empty shops on the first next to Season's Pizza on Main Street, be the kind of thing you are talking about limiting this zone to apply to?

Mr. Lopata: No, that is zoned BB. That does allow mixed use as well.

Mr. Begleiter: You could put that building into a BLR zone.

Mr. Lopata: Yes, but all of downtown projects are BB.

Mr. Begleiter: What is the difference between the districts.

Mr. Lopata: Here is the only relevant difference. In the BB district you can't have residential on the first floor. In BLR you can do it anyway you like.

Mr. Begleiter: You can have an office upstairs and residential downstairs.

Mr. Lopata: BB is a downtown district where people shop on the first floor and live above. That is what is called a neo-traditional zoning. BLR is more transitional. (inaudible). BLR might work at Elkton and W. Park Place. We have some there now, but not BB because BB is our downtown zone.

Mr. Bowman: (inaudible)

Mr. Lopata: BB also has 100% lot coverage. It is a downtown zone. BLR is 40%. That is a big difference. We might rezone to BB in one area like downtown. We suddenly wouldn't put BB on Elkton Road past where we are.

Ms. Sheedy: Roy, You mentioned the area BLR . . . (inaudible).

Mr. Lopata: There are a couple of parcels (Folks Fabrics) on Park Place just behind the property I mentioned. That is BLR.

Mr. Begleiter: Roy, do we need this zone at all?

Mr. Lopata: It has been very successful. As I mentioned, Elkton Road, perhaps S. College, some of our commercial areas that are on S. College around Chrysler, that whole long stretch (inaudible) which we might rezone north of where the TGI Fridays is, where the bank is, mixed use. A revised BLR might work there. Students could live down there and have some nice shops below it. I really don't want to get rid of this zoning category at all.

Mr. Bowman: I don't have any written requests but anyone who wants to step to the microphone and speak to this issue, please do so. Please state your name and address.

Mr. Hal Prettyman: I live at 10 Wedgewood Road, Newark, Delaware. I have to agree. I think this is one of the most successful categories of zoning that is out there. It has taken some of the worst properties in Newark and allowed developers such as myself to go in and pay an astronomical price for a piece of property and develop it in a use that is truly beautiful. An example is North Street. The business sat there for 20 years looking the way that it did with all kinds of problems for the neighborhood. It didn't fit in at all. At the highest zoning that you could possibly get in the City of Newark (inaudible). This zoning allowed us to go in and develop that parcel and gave the investors who bought it some comfortability of knowing that if they wanted to have some kind business, they could. The trend in Newark right now is apartments. If the property was bought by the University of Delaware and the University of Delaware decides to start putting in a lot of housing, you are going to see some reverse trends. There won't be this big push to build apartments. And, people are going to have to look for different uses for some of these properties.

You mentioned across from the hotel, in 30 or 40 years from now that might expand up that way and that area that is BLR may be a nice little shopping center or it could be something (inaudible). That allowed Mr. Mayhew to go out there and, I'm sure,

paid a pretty good number for those properties. I think that the Planning Commission should be commended on the project that he put out there.

There is a need for this zone. There is a need for the apartment category. It says in there that you can have mixed use or one or more of the following uses. So, it can be one of those uses or it could be one or more of those uses. I think that is kind of important. How many BLRs are there? I don't think there are any, zero, that are ½ acre in the City limits. So, that means that if anyone has BLR zoning right now, they have to go before this Board and they have to go up before City Council for approval for any project that is within the City. You have total control. So, if you don't want apartments there, and they don't match up with a half acre, it is my understanding that you don't have to approve them. So, I think you are kind of in the driver's seat. You have a tool in your tool bag that you can pull out whenever you want to use it, but you don't have to pull it out as opposed to taking this away from this zoning.

The only other things I would like to say are, one of the fastest growing categories in zoning is this mixed use category. There is some commercial, some office and then some apartments. I think that this is a zoning that you really have control over. It is not like you have three big parcels in the City that are zoned BLR and people are running to rezone them or to develop them. Not all projects could have been done in RM zoning because RM zoning has to have an acre to build on it. If I were even going to look at changing BLR, the first thing I would look to is to look at RM. Some of the Council people that I have had conversations with say that these are townhouses, why aren't you going through a townhouse zone. Townhouses require two acres. Isn't it a two acre minimum? So, how do you put in townhouses when you can't get two acres of ground?

Mr. Lopata: They changed that.

Mr. Prettyman: I think that this zone is the best of both worlds. I know the zoning people can get up and say that it is misused, or maybe there is a push right now for apartments, but the Council and this body both have the control to approve any BLR that will come up. I really think it is a tool in your tool bag that you are basically throwing out.

Mr. Bowman: The question I have for you, Mr. Prettyman is, are you speaking for or against the change?

Mr. Prettyman: I am for no change.

Mr. Bowman: Hal, why not eight units per half acre in the RM district and change this BLR to reflect what it really was intended to be in the first place – business limited residential. That would cure your problem.

Mr. Prettyman: That would address the issue of having apartments in the RM zone, I guess. I still think it is a good zone. I think you would see more projects coming to you under that zoning. There wouldn't be a need to do any kind of conversion to BLR but I still think BLR is a great transitional zone.

Mr. Bowman: Even with the changes, that BLR would give considerable flexibility. It just says that there must be some commercial use in the property.

Mr. Prettyman: Here is what you end up with, you have someone who builds a building, they know they can't fill the office space, but it will pay them to have the building with the office space with a sign out front and then have the apartments. Eventually, 30 or 40 years down the road, if someone want to, they can actually come in and buy the apartments and they can be a condo and it becomes eventually an owner occupant or they become owned by different people. I think that is a plus for the City down the road. I don't mean to contradict myself, but I also point out Route 896. That is an area close to that motel that can have a business in there. I just think it is a very flexible zoning category that you have. It's not like you have a lot of properties that are out in the community that the zoning is continually being brought to you. It may be brought to this

body and to Council but you all are in the driver's seat at this point and have the right to approve it or not approve it.

Mr. Bowman: Are there any questions for Mr. Prettyman?

Ms. Dressel: This is just a clarification point. For your project, you have the townhouses that could eventually be changed to condos, correct?

Mr. Prettyman: Yes.

Ms. Dressel: In the BLR zoning you have a strip of four townhouse apartments right now. Would three of those townhouses then remain as apartment rentals and could one of them turn into a business?

Mr. Lopata: Yes. BLR you can mix offices and residential.

Ms. Dressel: But, if it were changed to RM, that would remove that possibility.

Mr. Prettyman: My point is there shouldn't even be a business on that street. You really think that offices on North Street would be a good idea?

Mr. Lopata: Being realistic in today's economy, probably not.

Mr. Kevin Heitzenroder: 271 Beverly Road. I am also a resident and real estate developer in Newark. I have actually used BLR. I am not here to support this change. I like BLR the way it is. I thought maybe I could give you some uses of how we used it in the past. I used BLR on Chapel Street to redevelop what was the antique shop. If anybody saw the antique shop, there were tall weeds in the parking lot, zero maintenance to the building, (inaudible). Without BLR that would probably still be standing there today. We were able to go in and do residential units that made sense on Chapel Street. Amstel Square on Elkton Road – I can tell you first hand that commercial leasing is not doing very well and that is on a major corridor. When you take a side street like Chapel Street, I can't imagine how you would lease any type of commercial space on those side streets off the beaten path when right now we're having trouble leasing on a major artery. There are still some private properties, as I see it, that have a business zoning – BN or BC – that don't have the acreage to build to RM to be redeveloped as some type of townhouse or apartment use. So, the reason we all come to BLR is because it is one of the few zonings that allow you to deal with something on a smaller lot such as a half acre such as the antique shop was.

I also own a lot on Cleveland Avenue right to the right of the Elk's Lodge. That is a perfect candidate for BLR zoning whether there is a business underneath it or not. That would probably be a decision that would be made based on the economy at the time of development. DelDOT may have a different viewpoint on that since it is a very busy intersection. That property, however, is not large enough for RM apartment zoning. It meets the requirements for BLR zoning for some type of townhouse or residential development, it is a perfect use. If this portion of BLR goes away, so goes away any (inaudible) use that we currently had (inaudible). Or, we can put in a Dunkin Donuts by rights as of today or a 7-11 or something that is a traffic nightmare going in and out.

Mr. Lopata: That lot is so small, I think it would be a "7" or an "11."

Mr. Heitzenroder: So, I feel that without having some alternative way to address development, we are taking away one thing that we have (inaudible). I have never seen anyone buy a piece of property as BLR, come before this body and Council to get a subdivision approved. What I have done and what I have seen others do is come before this body and Council to get a rezoning. So, you have all the power. (inaudible) By taking it away completely, I think it puts all of us in a situation where I know there will be properties in the future that don't fit (inaudible).

Mr. Bowman: Is there anyone else from the public that wishes to comment?

Mrs. Jean White: 103 Radcliffe Drive. First of all, I am delighted to see this.(inaudible) One reason developers like BLR is because they can pack in more units and thus more renters. BLR is not a transitional zone when residential is all around it. The area requirements, even now, but certainly before, were much less stringent than RM or RR – setbacks, lot coverage. (inaudible). I think now is the time to eliminate this one particular category from BLR.

I am concerned, however, with the size of non-covered space that would be required for a mixed use project. This might be a loophole in the regulations.

Mr. Lopata: This has been in the Code since 1973. All I am suggesting is taking out the apartment use. Yes, the way this is worded, the amount of commercial space is intensifying – no more so than the townhouses in the BB district. Very little commercial will be on the first floor. That seems to have worked.

Mrs. White: Basically, I am supportive of it.

Mr. Bowman: We will bring it back to the table for any discussion from the Commissioners.

Ms. Sheedy: This is for Mr. Heitzenroder. It is still not clear, what is the downside if the RM zone's lot size if changed to a half acre?

Mr. Lopata: There is none but, that is not part of this package.

Ms. Sheedy: But if that that were to happen, from your standpoint, would anything substantially change?

Mr. Heitzenroder: It would certainly make it much better. This leaves us with properties that don't meet that acre criteria. (inaudible). It certainly helps us to have the lot size reduced in RM. That, at least, gives us another avenue to look at. As it is now, we are talking about a half acre and want to develop it residentially, essentially, we only have BLR. (inaudible).

Ms. Sheedy: You still have the combination of apartments and commercial.

Mr. Heitzenroder: Absolutely, we can certainly still do that under the Code. That might work in a lot of instances, but for instance, Rex's Auto body. I would agree with Hal that an office for commercial use on that street really doesn't fit in. The only one left in that particular area. That is more of a residential area. Aside from this meeting, Roy would you agree with us that commercial use doesn't belong on that street? My fear for the City is the Board of Adjustment will be flooded with variance applications. (inaudible).

Mr. Lopata: The area requirements for apartments in BLR and RM are relatively the same. There is a five foot setback difference. I think it is 30% vs. 40% in open area. They are close. The big change is RM is still an acre lot area minimum.

Mr. Prettyman: A lot of the projects that were approved, they did meet setbacks including setbacks for RM. (inaudible). Sometimes just because you approve something through BLR zoning doesn't mean that it didn't meet some of the setbacks for RM zoning. (inaudible) What we mean by transitional zoning is taking a parcel of property and changing the use of it. In BLR, you have something that could be used as business but it could be used as apartments. So, that is what, really, is being taken away. (inaudible).

Ms. Brown: Can I get a little bit of history? What was the original zone of the property that was changed to BLR?

Mr. Heitzenroder: The antique shop was zoned BC. The parcel on Cleveland Avenue is currently zoned BN. So, neither of those properties by right could have a very high commercial development put on them. I don't think that is what we want in certain areas. (inaudible).

Mr. Begleiter: Roy, wouldn't it make sense to make this change in combination with consideration of changes to RM as you yourself implied in your opening statement? Would it make sense to do a package thing here?

Mr. Lopata: It doesn't make sense to do it tonight because it has not been advertised.

Mr. Begleiter: I understand that. Would it make sense to do them together?

Mr. Lopata: If that is the Planning Commission's wish and you wanted to table this and asked us to come back with a combination, you could do that.

Mr. Begleiter: It seems that we have a situation where we are making a change to one and then the other available option isn't changed yet or might or might not be.

Mr. Lopata: Here is my sort of caveat about the second part having been through that exercise five or six years ago, I know that some Council members want this change. I don't know about the others. (inaudible) It is very hard to argue against the point which I agree with, if 16 units is okay on an acre, what is wrong with eight per half acre? It meets all the other requirements. That was, in fact, turned down by Council several years ago. So, that is the one caveat I throw out there. On the other hand, you might want to wait and come back in March and do these as a package.

Mr. Begleiter: The reason I raise it is that you did mention it in your opening remarks. If you think that the other district also could use a review. Maybe we end up in the next meeting or the meeting after with the same proposal that you looked at, but maybe it is easier to get approval and easier to satisfy the needs of the folks who propose these projects.

Ms. Dressel: Based on listening to these two developers who have come with reasonable projects and have had some success with that, it seems to me they are making an acceptable suggestion that we take a look at the RM zone because, you are right, we do have the flexibility of if somebody comes before us, saying it is one acre, you are under RM right now or they can go to the Board of Adjustment. If we are making a change, it seems to make sense that we would look at both of them in the sense that they seem to work hand-in-hand.

Mr. Bowman: Are there any other questions for Roy? I would like the Chair to treat the tabling of the proposal as a separate motion because the motion to table once seconded is not debatable.

MOTION BY DRESSEL, SECONDED BY SHEEDY THAT THE PLANNING COMMISSION TABLE THE PROPOSED ZONING CODE AMENDMENTS REGARDING THE BLR DISTRICT.

Mr. Bowman: Do you want to amend the motion to recommend that the Planning and Development Department consider both the BLR and RM zoning to make them compatible and come back next time?

AMENDMENT TO MOTION BY DRESSEL, SECONDED BY McDOWELL, AND THAT THE PLANNING AND DEVELOPMENT DEPARTMENT REVIEW THE BLR AND RM ZONING DISTRICTS TO MAKE SURE THEY ARE COMPATIBLE.

Mr. Begleiter: Let me just comment on this. My concern is that if Roy looks at this and says, we need to tweak this other thing also, I don't think we should limit it. I don't think we should put handcuffs on this thing. You just have to look at these two and see if they work together.

VOTE ON MOTION AS AMENDED: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

The Planning Commission meeting adjourned at 8:35 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission